

**Local Government Advisory Committee Meeting
Radisson Hotel Old Town
Alexandria, Virginia**

SUMMARY OF SESSION

Thursday, September 7, 2000

(9:08 a.m.)

The Local Government Advisory Committee met on Thursday, September 7, 2000 in the Washington Room of the Radisson Hotel Old Town in Alexandria, Virginia. The meeting was convened at 9:08 a.m. by Ms. Teree Caldwell-Johnson, Committee Chair.

Members Present:

Frederick Battle
Chris Bird
Clarence Brown
Teree Caldwell-Johnson, Chair
Judith Duncan
Gary Edwards
Robert Hadfield
Jerry Johnston
Mike Kadas
Sarah Lile
Anne Morton
Susan Ode
Linda Giannelli Pratt
Carol Rist
Katherine Slaughter
Arlyn Stepper
John Stufflebean
Bruce Tobey
Christine Weason
Beverly Weaver

EPA Staff Present:

Steve Allbee, Office of Water (OW)
Geoff Anderson, Office of Policy, Economics and Innovation (OPEI)
Mary Bell Austin, Region X
Fraser Felter, Region IX
Mark Flory, Designated Federal Officer (DFO)
Shawn Garvin, Region III
Paul Guthrie, DFO
John Hall, Office of Air and Radiation (OAR)
Becky Hendricks, Region IV
Rene Henry, Region III
Bill Jemigan, Region VI
Lisa Lund, Principal Deputy Associate Administrator, Office of Congressional and Intergovernmental Relations (OCIR)
Tom Moore, Region IV
Denise Ney, DFO
Anne Rowan, Region V
Lorie Schmidt, OAR
Berry Shore, Region II
Jim Taft, OW

Members of the Public Present:

Carol Kocheisen, National League of Cities
Earnest Paylor, National Aeronautics and Space Administration (NASA)
Ed Scheffner, NASA
Andy Seth, National Association of Local Government Environmental Professionals

EPA Staff, Cont.:

Diane Thompson, Associate Administrator, OCIR
Javier Velez-Arocho, OPEI
Don Zinger, OAR

WELCOME

Ms. Diane Thompson, Associate Administrator,
EPA Office of Congressional and Intergovernmental Relations

Ms. Thompson gratefully acknowledged the Committee members' contributions. She was also very pleased with the representation from EPA Regional Offices at this meeting. Ms. Thompson felt that the strong work plans the Committee had developed would keep them moving forward during the transition into the new Administration. She also affirmed that States and local governments would see more consultation earlier in the regulatory process and that the Agency would continue its work on a number of important issues without "rushing to judgment."

Ms. Thompson reported that the Federalism guidance documents were expected to be issued tomorrow and that much of the comment received from LGAC and the Small Community Advisory Committee had been incorporated into the Agency's guidance documents. She also expressed the Agency's commitment to expeditiously address the Unfunded Mandates Guidance, aligning it with the work that has been done on Federalism.

As part of the President's Clean Water Action Plan, the TMDL (Total Maximum Daily Load) regulation was promulgated in early July. This regulation, which will become effective October 1, 2000, requires States to assess the impairment level of a water body and develop the TMDLs that can be permissibly loaded into that water body. Addressing nonpoint sources will be the key to achieving future pollution reductions.

The Agency reinstated the one-hour standard for measuring ozone pollution pending the outcome of its appellate case before the Supreme Court. At present, the eight-hour standard at issue in the case remains optional but unenforceable. Issues regarding attainment versus nonattainment have emerged. Although scientifically a more accurate measure, the eight-hour standard has been largely unpopular due to local concerns about siting and economic development.

The next Brownfields conference will take place on October 11-13, 2000, in Atlantic City, New Jersey. During this conference the Agency will announce the recipients of 10 Showcase Community Awards. The competition for job training demonstration and development pilots was announced on July 17, and applications will be accepted through October 16. The Agency expects to select 10 pilots for this program by December. The next application period for Brownfields assessments and revolving loan fund awards should be announced later this month.

RECAP OF DENVER MEETING AND SUBCOMMITTEE UPDATES

Mr. Chris Bird, Issues Subcommittee Chair
Ms. Linda Giannelli Pratt, Process Subcommittee Chair
Ms. Anne Morton, Small Community Advisory Subcommittee Co-Chair

At its Denver meeting, the LGAC generated some valuable suggestions about how to develop a work plan and strengthen its organizational structure to accomplish its objectives. The full LGAC initially identified 27 potential issues to address over the next two years. That list then was pared down to five major issues. The Issues Subcommittee further reduced the number to three. However, members realized the categories were still too broad, and they recognized the need to focus very specifically in order to develop any recommendations. Three working groups were formed: air quality, water quality, and smart growth. A common theme among them was the issue of point source versus nonpoint source contribution to pollution. The members noted a lack of specific legislation or funding to address nonpoint source contribution. The following are highlights of the working group discussions:

AIR QUALITY

- C investigate incentives for local jurisdictions to implement State vehicle use reductions
- C evaluate EPA activities regarding reformulated fuels
- C focus on pending Court rulings, unintended impacts of community growth, and opportunities for local government participation in developing TMDLs and ozone and PM 2.5 implementation.

WATER QUALITY

- C ground and surface water source protection, especially from the effects of concentrated animal feeding operations

SMART GROWTH

- C continue to monitor EPA's programs and advise EPA how they can encourage local governments to develop Brownfields and inhibit sprawl
- C concern about the unintended consequences of some of EPA's smart growth programs (and other Federal programs as well), for example, those that produce point sources benefits but then contribute to new sources of pollution from nonpoint sources and sprawl
- C explore opportunities for EPA to further develop tools for measurement; for example, fund research and provide technical assistance

The Issues Subcommittee will begin drafting 1-2 page position statements that will define an issue, provide background information and make specific recommendations for the full LGAC to consider.

The Process Subcommittee developed a draft action plan at the Denver meeting. A copy of the action plan was provided in the LGAC Meeting Notebook at Tab 5. The deliverables and time lines outlined there will be the focus of the Process Subcommittee's work. A copy of the comments on EPA's Guidance document for implementing the Executive Order on Federalism was provided at Tab 6. Recognizing the importance of the Executive Order in building relationships between Federal

and local governments, the Subcommittee began discussing what kind of accountability system could be developed, how much involvement local governments might want to have in creating and monitoring that, and what would or would not be reasonable. The responses from the regional outreach surveys have been reviewed and summarized; regional participation will help determine what action to take next. Also, the Subcommittee's draft report on "Building the Communication Network Between the Federal and Local Governments" has now been through technical review, and the Subcommittee will examine EPA's responses.

The Small Community Advisory Subcommittee (SCAS) spent time developing its comments on EPA's Federalism guidance documents. Ms. Morton asked Committee members to note that what was formerly referred to as the "Ombudsman" recommendations was renamed "Advocate." Presentation of the full set of recommendations on advocate and arsenic was reserved for later in the meeting (see page 7 of this summary). Work continues on SBREFA, Federalism, sustainability, and arsenic. The Subcommittee also will be looking at a policy on flexible State enforcement response to small community violations. Other areas of importance to the Subcommittee are 1) technical assistance and TMDLs, and 2) a coordinated process for communication internally and with the public.

PRESENTATION

Dr. Ernest D. Paylor, II, Program Manager,
Natural Hazards Program, Office of Earth Science, NASA
Mr. Edwin Sheffner, Applications Division, Office of Earth Science, NASA

Dr. Paylor provided an overview of the Office of Earth Science's goals and approaches. NASA has developed comprehensive observation systems. Landsat7 and ASTER, for example, have been used to diagram the impact of Hurricane Floyd and recent volcanic ash deposits. The Pathfinder Series is designed to focus on specific observables; for example, the Vegetation Canopy Lidar measures specific topographies around the world, and the Gravity Recovery and Climate Experiment will be able to measure changes over ground water to a 1 centimeter level. QuikSCAT, which uses microwave scatterometry to measure global surface winds, helps predict where hurricanes may impact the land. Data from these and other NASA technologies are available to the public. Dr. Paylor stated that the data can be processed to meet the specific format requested by end user groups (e.g., other government agencies, businesses and communities). End users can also request specific types of observations. NASA is interested in what can be done jointly to make satellite remote sensing information more useful for the work that EPA, members of LGAC and others are doing. There are numerous potential applications for geodetic science and technology and remote sensing relevant to issues of environmental protection and planning for community growth.

Mr. Sheffner stated that the Office of Earth Science and its predecessors have been collecting data for the last 30 years, and he emphasized the point that that data is available. In fact, NASA is anxious to see the use of that data and the science expanded beyond the traditional science

community. Mr. Sheffner reviewed some state and local initiatives, again emphasizing an interest in user requirements for data and information products.

NASA has issued joint announcements with EPA and FEMA. NASA is in the early stages of developing some new programs that will respond to EPA's needs.

Mr. Sheffner encouraged LGAC members to contact Wendy Coleman and to get involved in this planning process, as those programs would be directly relevant to issues LGAC is trying to address. NASA also conducts informational workshops. One is scheduled next week in California, and another at the end of October in the Northeast. There will also be one in the Southwest, although that site has not yet been determined. He encouraged private sector involvement in these workshops.

Mr. Sheffner illustrated a "Project Funding Profile." He noted that NASA is willing to assume essentially most of the financial risk to develop applications; cost of the maintenance/operation of the project, however, is the responsibility of the partner. NASA's role is limited to the development phase.

Mr. Sheffner invited LGAC members to access these web sites for more information:

- C <http://www.earth.nasa.gov> (ESE homepage)
- C <http://www.earth.nasa.gov/nra/index.html> (for research announcements)
- C <http://www.earth.nasa.gov/education/index.html> (education page)

PRESENTATION

Mr. Steve Allbee, EPA Office of Water

In an 30-minute PowerPoint presentation, Mr. Albee provided an analysis of the gap in water infrastructure funding. The bottom line, he said, is that capital spending is inadequate, new water/waste water debt is flat, sustainability of the system is at risk, affordability is a growing problem, and there is too little research. The projected gap by 2020, based on current deficit spending and increasing investment requirements, will be between \$120-200 billion. This projection only includes those costs already associated with requirements in the system for achieving environmental objectives; it does not reflect TMDL changes, for instance.

Highlights of Mr. Allbee's illustrations include the following:

- C projected 30-35% of future capital budget on water, sewage and drainage to support those systems
- C the bulk of water and wastewater funds are spent on maintenance (about equal for water and for wastewater)
- C capital costs have been declining since about 1990
- C municipal debt has been holding constant, a response to the decline in federal outlays
- C cumulative municipal debt has doubled in the last few years

- C growth in economy and population is putting progress at risk
- C with pipes 50-100 years old and treatment plants 20-30 years old, the fiscal impact of renewal is insurmountable
- C the shift to treatment plants meant little was spent on renewal of pipes
- C increased user fees will make affordability a major issue, particularly for low income communities; by 2020 about 25% will exceed 4% of median household income for water and waste water fees
- C there are discrepancies in the trend of public versus private R&D expenditures

Mr. Albee encouraged fiscal partnerships between local, State and Federal governments. He also endorsed policies that would foster competition. Rather than let systems degrade, he advised incremental investments which he estimated would save 20 percent. Mr. Albee concluded by stating "there is no issue that is going to be more important in the environment business in the next 20 years than this issue."

PUBLIC COMMENT

Mr. Andy Seth, National Association of
Local Government Environmental Professionals

The National Association of Local Government Environmental Professionals (NALGEP) established a Clean Air Task Force. (The Task Force included several members from the LGAC). NALGEP was interested in determining what local governments felt they needed from State and Federal governments and other local officials to improve air quality in their communities, and was also interested in identifying innovations that could be shared with other local governments. The results of 85 interviews with diverse local government officials throughout the country produced 20 findings and 10 recommendations which NALGEP has published in its report, *Profiles of Local Clean Air Innovation: Empowering Communities to meet the Air Quality Challenges of the 21st Century*. Mr. Seth distributed copies of the report to those who had not received one already. Mr. Chris Bird recommended that members review the report since some of its objectives were common with those of the LGAC.

Mr. Seth stressed two points. One, healthy air is important to communities' economic development. He noted that where air quality is good, communities fear it is declining and that industries will leave once the quality of life diminishes. Where air quality is poor, the communities' concern is the inability to attract businesses to the area. Secondly, local government leadership is essential to cleaning up the air. Many local governments believe that the Clean Air Act does not go far enough to address many of the challenges local governments face, most notably sprawl and traffic congestion. Mr. Seth highlighted a couple of the innovations contained in the report:

- C a retrofit of city buildings in Minneapolis has reduced CO₂ emissions by 10,000 tons annually and saved the city \$750,000

- C through a partnership with BP Oil, 23,000 leaking gas caps were replaced in Cincinnati, reducing automobile emissions of Volatile Organic Compounds by 1,300 tons annually

Among the recommendations described in the report, Mr. Seth noted the following:

- C establish funds for local governments under Section 103 of the Clean Air Act for demonstration pilot programs
- C establish a national Clean Air Showcase Communities program that would receive coordinated assistance from Federal agencies and recognize the leaders in brownfields development
- C develop a regional focus in addressing air quality issues

PRESENTATION OF ADVOCATE AND ARSENIC RECOMMENDATIONS

Ms. Anne Morton, Small Community Advisory Subcommittee Co-Chair

A copy of the Advocate recommendations was distributed to LGAC members and included in the LGAC Meeting Notebook at Tab 3. Ms. Morton stated that the Subcommittee had been working with EPA staff for about a year and had built on the inventory from the Small Town Task Force effort. For the purpose of these recommendations, "small communities" refers to populations under 2,500. This definition encompasses 26,000 communities nationwide, more than 60 million people, including towns in remote locations as well as those near metropolitan areas. She cited notable restrictions at the 2,500 level on a community's ability to hire resources such as engineers and grant writers.

The Subcommittee would like the Agency to implement regional advocates in the field who would work solely with small communities, with a coordinator at EPA headquarters. Accountability to EPA and coordination at headquarters are the two key elements. As to whether the fulfillment of this recommendation would require additional staff or the reassignment of existing staff, the Subcommittee did not feel it was appropriate to specify how EPA should establish its organizational structure.

Ms. Giannelli Pratt clarified that it was possible to have an office within an office without assigning a separate Associate Administrator.

In response to a question regarding the language "have the current Small Community Advisory Subcommittee as its FACA advisory committee," Ms. Morton responded that the Subcommittee felt strongly that SCAS should be EPA's direct link to small community issues and the resource EPA uses to understand the impact on small communities. She clarified that they were not proposing an independent FACA.

Members raised three concerns: that some small town interests might be omitted by not including populations up to 5,000 or even 10,000; that because of regional differences, a guidance document might be more useful than a nationwide system; and that the point person should be located in the

Regional Administrator's office, have a local government background, attend senior staff meetings in the Region, and act as an advocate for local governments, regardless of size. Ms. Caldwell-Johnson reminded the Committee that the agenda called for a vote on these recommendations the following day; further discussion was tabled until then.

The concerns in the arsenic report focus primarily on the financial impact the new ruling would have on small communities; in this case, SCAS included populations up to 10,000. Ms. Morton noted discrepancies in the data provided by EPA's Office of Water and the American Water Works Association (AWWA) during their presentations at the June meeting. SCAS is recommending that EPA not implement any level below 20 parts per billion (ppb), and Ms. Morton added that the Subcommittee did not even feel comfortable with that number, based on the data it had seen to date. The Subcommittee's position is supported in part by data from some small communities, which is outlined in the report. Also, SCAS is requesting additional demonstration projects, compliance assistance, and reports on the results of the implementation.

To answer some of the Committee members' questions, Ms. Morton deferred to Mr. Jim Taft from the EPA Office of Water. He clarified several points:

- C this rule making is required pursuant to the amendments of the Safe Drinking Water Act
- C the final statutory deadline is January 1, 2001
- C there was not a special FACA assembled to deal with the formulation of this proposed regulation
- C there was a SBREFA review that targeted small communities, and also a subsequent report publishing the results of those consultations
- C the Science Advisory Board will finalize its draft report on September 22
- C the National Academy of Sciences has provided an estimate on health effects and concluded that a level of 50 ppb is not sufficiently protective
- C the statutory public comment period closes on September 20
- C this would be the first time LGAC has ever submitted a set of recommendations to the docket as part of the formal comments

In light of the AWWA's recommended standard of 10 ppb, one member raised the concern about recommending 20 ppb. He felt that might inadvertently send the message that small communities "deserve less protection." It will be very expensive to implement this rule making, and it will impact small communities disproportionately, largely because of the correlation to ground water systems. At an Maximum Contaminant Level of 5 ppb, EPA estimates the total national annual average cost to be \$375 million; AWWA's estimate is 4 times that amount. Ms. Morton asserted that the scientific data that has been provided is insufficient to make a determination of what that level should be, no financial analysis has been done to accurately project what the impact will be on small communities, no implementation plan has been provided, and whatever assistance might be available is yet unknown.

Mr. Taft confirmed that there are still some open questions. EPA would like to ensure that the target level is no riskier than 1 in 10,000, which tends to be the target used for other drinking water regulations. That is the level EPA has proposed at 5 parts per billion, moving off the feasible level. How heavily one weighs the uncertainties, such as those surrounding the interpretation of the Taiwan study for example, will prompt a higher level. The Academy of Sciences has helped provide an understanding of the health risks and how severe they may be. These include bladder cancer, lung cancer, and circulatory problems. The Academy estimates that the risk at the current level of 50 parts per billion is 1-1.5 in 1,000. The SBREFA panel report identified a number of the same issues raised by LGAC and did not make a recommendation for a particular regulatory level. Mr. Taft believed that in its final report the Science Advisory Board also would not recommend a particular level, and instead would ask EPA to "consider exercising its cost benefit authorities more robustly to move to a different level."

PRESENTATION OF "BUILDING THE NETWORK" RECOMMENDATIONS

Ms. Linda Giannelli Pratt, Process Subcommittee Chair

Ms. Giannelli Pratt stated that considering the Executive Order on Federalism, this report was very timely. The recommendations were outlined at Tab 4 in the Meeting Notebook. She asked members to review them and provide comments. The recommendations would then be forwarded, with comments incorporated, to Administrator Browner.

PRESENTATION ON LAND USE SIP GUIDANCE

Mr. John Hall, EPA Office of Air and Radiation

EPA is developing a guidance document regarding granting air quality credit for land use policies in State Implementation Plans and Conformity Plans. The guidance will involve a variety of projects. Infill development, Brownfields development, and transit-oriented development are some of the measures that can be included. EPA is in the process of increasing Federal incentives to develop beneficial land use policies and projects, and issuing specific guidance on how to account for and model the impacts of beneficial land use policies and projects. The guidance will include examples of best practices.

The Land Use Policy Guidance will serve as a tool for advancing the goals of smart growth. It will offer flexibility to adapt to the needs of a particular area, and will encourage innovations that improve air quality as well as economic development. All voluntary measures will be subject to an overall cap of three percent. However, if a State can meet the requirements of an Economic Incentive Program, no cap will apply.

EPA will initially provide general guidance on how to take air quality credit, with specific guidance on quantification to follow. The final guidance document and infill quantification guidance are scheduled to be released in late October.

The Committee broke out into subcommittee sessions for the remainder of the afternoon (until approximately 6:00 p.m.).

Approved by:

_____/s/_____
Teree Caldwell-Johnson, Chair

30 November 2000
Date